



(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR
M.A. No. 562/2004

APPELLANTS

Ramchandra Singh and others

Versus

RESPONDENTS

The Oriental Insurance Co. Ltd. and
others

Judgment post for 7-5-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR**M.A. No. 562/2004****APPELLANT**
Claimants

1. Ramchandra Singh, S/o. Sarvnarayan Singh, aged about 65 years, Occupation house holding.
2. Indravati, w/o. Rajendra Singh, aged about 30 years, Occupation House wife.
3. Vinay Kumar Singh, s/o. Rajendra Singh, aged about 5 years, minor through guardian mother (Appellant No. 2)
4. Bineshwar Singh, S/o. Rajendra, aged about 5 years, minor through guardian mother (Appellant No. 2)
5. Vidhyavati, D/o. Rajendra Singh, aged about 4 years, minor through guardian mother (Appellant No. 2)

All are R/o. Village Dharsedi, P.S. Bhaiyathan, Tahsil Surajpur, Distt. Surguja (C.G.)

Versus**RESPONDENTS**
Non-applicants

1. The Oriental Insurance Co. Ltd. through Branch Manager, Branch Office, Sadar Road, near S.B.I., Ambikapur, Distt Surguja (C.G.)
Insurer
2. Anita Devi, W/o. Satish Agrawal, aged about 30 years, R/o. Main Road Vinoba Nagar, near Gaytri Mandir Bilaspur, Distt. Bilaspur (C.G.) presently R/o. Main Road Surajpur, P.S. & Tahsil Surajpur, Distt. Surguja (C.G.)
Owner
3. Indrajit, S/o. Itwari Ram, aged about 35 years, Occupation Driver, R/o. village Joor, P.S. & Tahsil Surajpur, Distt. Surguja (C.G.)
Driver

Shri A.K. Shukla, Adv. for the appellants.

Shri Abhisek Sinha, Advocate for the respondent No. 1.

None appears for other respondents.

J U D G M E N T**Dhirendra Mishra, J.**

The appellants/dependants of deceased Rajendra Singh have preferred this appeal under Section 173 of the Motor

Vehicles Act, 1988 against the award dated 19th March, 2004 passed by learned 3rd Additional Motor Accident Claims Tribunal, Surajpur in Claim Case No. 19/2002, whereby the application for compensation towards death of Rajendra Singh has been rejected.

2. The case of the appellants before the Tribunal, in brief, was that on 27-1-1999 at about 12.00 noon, deceased was going towards Orgi Bazar by his Spark moped. At that time, near village Bagaihanala near village Baijnathpur, truck No. M.P.26-D/3266 owned by respondent No. 2 and driven rashly and negligently by respondent No. 3 dashed him, as a result of which he died on spot. In all, a sum of Rs. 25,00,000/- was claimed under various heads.

3. Respondent no. 1 denied the averments in the claim petition and stated that no accident involving truck No. M.P. 26-D/3266 occurred on 27-1-1999 and no report to this effect was lodged in the concerned police station Bhaiyathan. It was further stated that the cheque given by the insured towards the insurance policy had bounced, and therefore, the vehicle was not insured. The deceased died due to fall from moped as a result of heart attack. The claim is hefty and exaggerated. The claim petition has been filed by the applicants in collusion fraudulently. However, the respondents No. 2 and 3 have admitted the accident and have taken a defence that the vehicle was being driven by the driver having valid and effective driving licence and the vehicle was insured for the relevant period and in case the appellants are held entitled for any compensation, it shall be the liability of the Insurance Company.

4. On the basis of the pleading of the respective parties, various issues were framed by the Tribunal and the claim petition was rejected by recording a finding that from the evidence available on record it is not established that deceased Rajendra Singh died on 27-1-1999 as a result of accident

caused by truck no. M.P. 26 D/3266 being driven rashly and negligently by respondent No. 2 but the accident occurred because the deceased while driving Spark moped rashly could not control the same in the slope near Bagaihanala as a result of which he fell below the culvert and his head was mingled in the mud.

5. Learned counsel for the appellants submits that the above finding of the Tribunal is contrary to the evidence available on record and the same is based on the papers concerning crime No. 14/1999 registered in police station Jhilmili. The statement of witnesses A.W. 2 Shambhunath Choubey and A.W. 3 Indradev who had witnessed the accident, have been disbelieved on extraneous consideration. The First Information Report was lodged by appellant No. 1 Ramchandra Singh who was not an eye-witness and, therefore, the claim should not be rejected only on the ground that no offence was registered against the driver of the offending vehicle. The police without making any proper investigation has filed the case without notice to the complainant, therefore, filing of the case on such investigation could not be made basis for reaching to the conclusion that no accident involving the truck in question occurred resulting in death of Rajendra Singh.

6. On the other hand, Shri Abhisek Sinha, Advocate appearing for the Insurance Company has supported the impugned judgment and stated that from the papers produced in the evidence by the claimants themselves, the version about the accident given by the claimants is belied. The claimants in collusion with respondents no. 2 and 3 have filed a petition after almost 2 ½ years of the accident. Rajendra Singh died on 27-1-1999, however, the written report of the accident was lodged on 8-6-2000 in Police Station Jhilmili. The collusion between the claimants and the driver and owner of the vehicle is writ large as the owner of the vehicle in their written statement

which was filed after more than 3 years admitted the accident for the first time. However, they have not entered into the witness box and they did not inform the Insurance Company about any accident involving their vehicle immediately after the accident. Reliance is placed on United India Insurance Co. Ltd. -v- Hussain Sab and others reported in 2006 ACJ 1352 wherein the Karnataka High Court has held that the claimants produced F.I.R. and other documents relating to criminal case which disclosed that the deceased were traveling as passengers in a goods vehicle. The documents produced by the claimants themselves bind them and the claimants cannot take a stand that the contents of the documents filed by them did not reveal true state of affairs.

7. I have heard the learned counsel for the parties. I have perused the impugned award as also the documentary and oral evidence available on record.

8. The version given by Ramchandra Singh (A.W. 1) father of the deceased, the complainant who gave Merg intimation Ex. P-6 as also the F.I.R. of Ex. P-8 has stated that he reached to the spot after receiving the information and saw his son dead. However he was not aware as to how he died. His son could not control the vehicle as a result of which he fell down. The police did not make proper inquiry and filed the case by saying that he fell down from the moped. He learnt about the involvement of the truck driven by respondent No. 3, and owned by respondent No. 2, by A.W. 2 Shambhunath Choubey and Indradev (A.W. 3) whereupon he lodged the report on 12-2-1999 at Police Station Jhilmili. A.W. 2 Shambhunath Choubey and A.W. 3 Indradev claiming themselves to be eye-witnesses have stated that the deceased was going by his moped at about 12.00 noon, at that time, he was hit by the truck in question. They called the driver to stop the vehicle who stopped the vehicle for some time, and thereafter raced away. Rajendra Singh died on spot. Crowd had

gathered however, since they had to go to market they asked others to inform to the house of the deceased and proceeded to market. Therefore, he could not disclose this fact to Ramchandra immediately. In cross-examination also, it is admitted that they did not disclose this fact even to their family members and to any other person. If oral statement of these witnesses is scrutinized, mere intimation of Ex. P-6 and F.I.R. of Ex. P-8, it is very difficult to accept the version given by these witnesses regarding involvement of the truck in question in the said accident, particularly when the involvement of the truck was brought to the notice of the police for the first time after more than six months of the accident. It is pertinent to mention here that learned Tribunal while coming to conclusion that the claimants and owner and driver of the vehicle have collided as observed in para 14 of the impugned award that in Claim case No. 16/2002 (Chandravati Sahu -v- National Insurance Company and others), the claimants of that case have also filed claim petition saying the respondent no. 2 and 3 as owner and driver of the vehicle with almost identical facts and in both these claim cases, no documentary evidence establishing the involvement of the vehicle in both the accidents was available and the petitions have been filed fraudulently in collusion to make illegal gain from respondent-Insurance Company.

9. From the evidence available on record, except the statement on oath of two alleged eye-witnesses and the statement of appellant No. 1 that the truck in question was involved in accident, there is no other documentary evidence available on record regarding involvement of the vehicle. So far as the admission of the driver and owner of the offending vehicle regarding involvement of their vehicle in the accident in question, is concerned, they have not entered into witness box to prove averments in their written statements. As already mentioned above, the statement of appellant No. 1 Ramchandra

stands contradicted from his own report of Ex. P-6 and, therefore, this Court is also of the considered opinion that the Tribunal has not committed any illegality or irregularity in reaching to the conclusion that the appellants have failed to prove the involvement of the truck belonging to respondent No. 2 and driven by respondent No. 3 in the accident resulting in death of Rajendra Singh. There is apparent collusion between the claimants, owner and driver.

10. The appeal is devoid of substance and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge